COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

CRIMINAL APPEAL NO. 166 of 2001
(OLD NO. 695/1986)

Bhup Singh & another .....Appellants

Versus

The State ....Respondent

Sri. I.S. Mehra, learned amicus curiae for the appellants
Sri Harish Pujari, learned Add. GA for the State/Respondent No.1

Approved for reporting.
~~Not approved for reporting.~~

Date: December 12, 2007

(Dharam Veer, J.)

RESERVED JUDGMENT

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL NO. 166 of 2001
(Old No. 695/1986)

1. Sri Bhup Singh S/o Karam Singh
   R/o Village Dhungrabora Patti Chhetra Digali Chaur, P.S. Digali Chaur, Tehsil Champawat, District Pithoragarh.
2. Sri Diwan Singh S/o Deb Singh, R/o Village Dungrabora, Distt. Cheetra, Dungabora Tehsil Champawat, Distt. Pithoragarh

....**Appellants**

Versus

The State **....Respondent**

Dated: December 12, 2007

Sri I.S. Mehra, learned counsel for the appellants.
Sri Harish Pujari, learned Addl. GA for the State/Respondent No.1

HON. DHARAM VEER, J.

This appeal, preferred under section 374(2) of The Code of The Criminal Procedure, 1973 *(hereinafter to be referred as Cr.P.C.),* is directed against the judgment and order dated 19.02.1986 passed by Sessions Judge, Pithoragarh in Sessions Trial No. 13/1985 State Vs. Bhup Singh & others, whereby the learned Sessions Judge has acquitted the accused Jodh Singh and Dungar Singh for an offence punishable u/s 366 The Indian Penal Code, 1860 *(hereinafter to be referred as* IPC). Appellants Bhup Singh and Diwan Singh were held guilty of the offence punishable u/s 366 of IPC and each of them was sentenced to R.I. for a term of five years and to pay a fine of Rs. 500/- each and in default of payment of fine to further undergo, R.I. for a period of six months.

u/s 107/116 Cr.P.C. in the court of S.D.M., Lohaghat in which date was fixed in the court i.e. 22.10.1980. Due to the change of the dated in the case, Smt. Parvati Devi was coming back to her house on foot along with Smt. Devki Devi and Bahadur Ram. When she reached in the forest of Jharpatiya in village Dhingra at about 6:00 P.M. in the evening, then the appellants Bhoop Singh and Diwan Singh and co-accused Dungar Singh and Jeet Singh (who were acquitted by the trail court) dragged Smt. Parvati Devi by her braid towards the forest. The complainant Gopal Singh had searched her but he could not get whereabouts of Smt. Parvati Devi and the complainant had a doubt that the accused persons named in the F.I.R. had abducted Parvati Devi. With the same averments, the F.I.R. was lodged by Sri Gopal Singh on 23.10.1980. On the basis of this F.I.R., Patwari Dudhpokhra prepared the Chik F.I.R., i.e. Ex.Ka. 1 on 23.10.1980 at 10:00 A.M. Then the Naib Tehsildar, Champawat passed an order on 25.10.1980 directing the Supervisor Kanoongo, Pulla to investigate the matter, that order is Ex.Ka.2. Then the Suprevisor Kanoongo, Pulla has passed an order on 26.10.1980 to Patwari Dudhpokhra to hand over the papers to him and the Patwari Circle Dudhpokhra had given all the relevant papers to Supervisor Kanoongo on 26.10.1980. Smt. Parvati Devi had come in the Patwari headquarter of the Parvati Digalichaud in the intervening night of 31.10.1980/1.1.1980 and narrated the entire incident happened with her. Shiv Dutt Joshi, Patwari Digalichaud made an application with the same averments to Supervisor Kanoongo, Circle Pul-Hindola, the Investigating Officer of this case that application is Ex.Ka.3. (In rural hilly areas of

that Supurdaginama is Ex.Ka.5. He has also recorded the statement of Gopal Singh u/s 161 Cr.P.C. i.e. Ex.Ka.7. Ex.Ka.8 is the statement of Kunwar Singh recorded u/s 161 Cr.P.C. During the course of investigation, the I.O. recorded the statements of the witnesses and after completing the investigation, he submitted the charge-sheet against the appellants Bhup Singh and Diwan Singh and two other co-accused Jodh Singh alias Jeet Singh and Dungar Singh, i.e. Ex.Ka.6.

3. Learend Chief Judicial Magistrate, Pithoragarh has committed the case to the court of Sessions on 04.09.1985 under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

4. Learned Sessions Judge, Pithoragarh framed the charge against the appellants Bhup Singh and Diwan Singh and accused Dungar Singh and Jodh Singh u/s 366 I.P.C. on 4.10.1985. The charge was read over and explained to the appellants/accused who pleaded not guilty and claimed to be tried.

5. To prove its case prosecution has examined P.W. 1 Rajendra Singh, Patwari, P.W.2 Gopal Singh, Complainant of the case, P.W.3 Kunwar Singh, P.W.4 Smt. Parvati Devi victim and P.W.5 Ambiram, Kanoongo/Investigating Officer.

6. After that the statements of the appellants and two other accused persons, who were acquitted by the trial court, were recorded u/s 313 Cr.P.C. who had denied the allegations made against them. However, in defence they have not

Bhoop Singh and Diwan Singh were held guilty of the offence punishable u/s 366 IPC and each of them was sentenced to five years R.I. and to pay a fine of Rs. 500/- each and in default of payment of fine to further undergo R.I. for a further period of six months. Feeling aggrieved by the said judgment and order dated 19.2.1986, the appellants have preferred the present appeal.

8. I have heard Sri I.S. Mehra, learned amicus curiae for the appellant and Sri M.A. Khan, learned brief holder for the State and perused the entire material available on record.

9. To prove its case, the prosecution examined P.W.1 Patwari Rajendra Singh Khanka who has stated in his statement that on 23.10.1980 he was posted as Patwari Dudhpokhra. On that day, the complainant Gopal Singh had lodged a written report in his headquarter Dudhpokhra. On the basis of that written report, he had prepared the Chik FIR i.e. Ex.Ka-1 and the case was registered u/s 366 IPC against the appellants and two other accused persons who were acquitted by the trial court. He recorded the statement of Gopal Singh in the headquarter. After that the investigation of the case was transferred to Kanungo Ambi Ram as he was a new comer and he had not received the training for investigation.

10. P.W.2 is Gopal Singh who has not supported the prosecution case and was declared hostile.

11. P.W.3 is Kunwar Singh who has also not supported

this reason she was living in the house of the maternal uncle on those days and on those days, appellant Bhup Singh committed rape with her against her wish due to which she conceived a child. Appellant Bhup Singh had tried for the abortion but she refused to do so and due to this reason Bhup Singh had threatened to kill her and she also reported the matter to the SDM, Lohaghat and case under Section 107 Cr.P.C. was initiated in that court. The appellants and two other accused persons, who were acquitted by the trial court, were the party in that case and all these appellants and accused persons used to attend the court and she also used to attend the court. She had come to Lohaghat in connection with that case. When she was coming back after attending the date from the court to her house, then she was accompanied with Gopal Singh, Raghubar Singh and Devki Devi. Up till Ratamata, Raghubar and Gopal Singh came with her and from there, Raghubar and Gopal Singh went by bus and Devki Devi accompanied her. When she reached in Jharpatia along with Devki Devi, then the appellants Bhup Singh and Diwan Singh and accused Dungar Singh and Jodh Singh (acquitted by the trial court) met her and dragged her towards the *Gadhera* and thereatened her that if she would make any hue and cry, then they would kill her. From the forest route, they had taken her to village Dungra of appellant Diwan Singh where the Goshala of appellant Dewan Singh was there and in that Goshala, she was detained by the appellants and two other accused persons, who where acquitted by the trial court, for three days. In that Goshala, appellant Diwan Singh had called a Nepali and had made an agreement to sell her for Rs.2,000/- and also threatened her that is she would refuse, then he will cut

When the wife of appellant Diwan Singh slept, then she came out from the Goshala on the pretext of easiness and ran away from there. Thereafter, she had gone to Patwari Digalichaur and she narrated the entire incident to Patwari. After that Kanungo also reached there and he also enquired the matter form her. She was detained in the Goshala of appellant Diwan Singh. This witness was cross-examined at length by the defence counsel but nothing has come out in her statement which may create any doubt in her evidence. The evidence of this witness is trustworthy, reliable and natural.

13. P.W. 5 is Kanungo Ambi Ram, Kanungo/I.O. of the case who has stated that on 22.10.1980 he was posted as Kanungo Pul-hindola and he was there up to June, 1981 and Patwari Circles Dudhpokhra and Digalichaur was within his area. On 23.10.1980, the complainant Gopal Singh lodged a report to Patwari Dudhpokhra, on the basis of which the Patwari prepared the Chik FIR and the case was registered. The Patwari Rajendra Singh was not a trained Patwari, hence Naib Tehsildar Champawat had passed an order on 25.10.1980 and transferred the investigation of the present case to him. This order was passed by Shanker Dutt Joshi and he had identified his signatures and handwriting, i.e. Ex.Ka-2 He has received the order on 26.10.1980 and after that he had received all the concerned documents from the Patwari on 27.10.1980. On 01.11.1980, the Patwari Digalichaur, Shiv Dutt Joshi gave a written information i.e. Ex.Ka-3. On this information, he came in the Patwari Headquarter Digalichaur and recorded the statement of victim Parvati Devi. During the course of investigation, he prepared

Mehra, Kanungo Circle Pulla. After completing the investigation, the charge sheet was submitted by Pashupati Nath Mehra, that charge sheet is Ex.Ka-6. during the course of investigation, the Patwari Rajendra Singh Khanka recorded the statement of Gopal Singh and he had field that statement, i.e. Ex.Ka-7. He also filed the statement of Kunwar Singh whichw as recorded by him, the copy of that statement is Ex.Ka-8.

14. After that the statements of the appellants and two other accused persons, who were acquitted by the trial court were recorded u/s 313 Cr.P.C. who had denied the allegations made against them.

15. Learned amicus curiae for the appellant argued that there is a solitary evidence of Smt. Parvati Devi against the appellants/accused and that does not inspire any implicit confidence. This argument of learned counsel for the appellant is not sustainable on the basis of evidence produced by the prosecution. In the above said case, the prosecution examined five witnesses namely P.W.1 Rajendra Singh Khanka and P.W.5. Kanungo Ambi Ram, who are the I.Os. of the case; P.W.4 is Smt. Parvati Devi who is the victim of the case; P.W.2 Gopal Singh and P.W.3 Kunwar Singh, who were declared hostile. As discussed in the above said evidence, victim Parvati Devi was the wife of Bhuwan Singh. However, Bhuwan Singh left her and had married with another lady and he had left her, due to this reason Parvati Devi was living in the house of her maternal uncle in village Chaudala on those days and the appellant Bhup Singh committed rape with her against her

date from the court to her house, then she was accompanied with Gopal Singh, Raghubar Singh and Devki Devi. Upto Ratamata, Raghubar Singh and Gopal Singh came with her and from there Raghubar and Gopal Singh went by bus and Devki Devi was accompanying her. When she had reached in Jharpatia along with Devki Devi, then the appellants Bhup Singh and Diwan Singh and co-accused Dungar Singh and Jodha Singh (who were acquitted by the trial court) had dragged her towards the *Gadhera* and thereatened her that if she would make any hue and cry, then they would kill her. Form the forest route, they had taken her to Village Dungra of appellant Diwan Singh where the Goshala of appellant Dewan Singh was there and in that Goshala, she was detained by the appellants and two other accused persons, who were acquitted by the trial court, for three days and in that Goshala, appellant Diwan Singh had called a *Nepali Dautiyal* and had made an agreement to sell her for Rs.2,000/- and also threatened her that if she would refuse, then he will cut her nose and due to the fear, she could not said anything and she was in the illegal custody of appellants Diwan Singh and Bhup Singh, In the night, when the wife of appellant Diwan Singh had slept, then the victim Parvati Devi could manage to escape from the Goshala on the pretext of easiness and thereafter she ran away from there, On the next day, Parvati Devi had gone to Patwari Digalichaur and she narrated the entire incident to Patwari by way of application i.e. Ex.Ka-3. After that, Kanungo Ambi Ram also reached there and he also enquired the matter from Parvati Devi. Thereafter, the I.O./ Kanungo Ambi Ram recorded the statement of victim Parvati Devi. In this way, it is proved by the prosecution that the victim Parvati Devi was

Parvati Devi on the above said facts and circumstances of the case inspire implicit confidence and the same is also reliable and trustworthy. Another eyewitness, who was also accompanied with victim Parvati Devi, was Devki Devi. It has come in the evidence of P.W.5 Kanungo Ambi Ram that Devki Devi had died. As Devki Devi was not alive at the time of the trial, hence she could not be examined by the court. Therefore, for the facts and circumstances of the case as discussed above, the only evidence which might be available was the evidence of victim Smt. Parvati Devi and as such, there is no reason to disbelieve her testimony. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability, It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. I am fortified in my view by the dictum of Hon'ble Apoex Court in the case of *Chittar lal v. State of Rajasthan* reported in **(2003) 6 SCC 397** In para 7 of the said judgment, it was held as under:-

> *"Evidence of the person whose name did not figure in the FIR as witness does not perforce become suspect. There can be no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses should be indicated in the FIR. As was observed by this Court in Shri Bhagwan V. State of Rajasthan 1 mere non-mention of the name of an eyewitness does not render the prosecution version fragile. The information was not lodged by an eyewitness. Mental condition of a persons whose father has lost his life inevitably gets disturbed. Explanation offered by witnesses for non-mention of PW 3's name is plausible. Additionally, it is to be noted that in the present case the statement of PW 3 was recorded on the same day of incident immediately after the investigation process was set into motion. Therefore, the plea that PW 3's testimony is doubtful lacks substance. The other plea was that conviction should not have been made on the basis of a single witness, PW 3's testimony. This plea is equally without essence. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1987 (in short "the Evidence Act").*

> ***evidence of the singly witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact****. This position has been settled by a series of decisions. The first decision which has become locus classics is Moha. Sugal Esa Mamasan Rer Alalah v. R. 2 The privy Council focused on the difference between English law where a number of statutes make conviction impermissible for certain categories of offences on the testimony of a single witness and Section 134 of the Evidence Act. The view has been echoed in Vadivelu Thevar v. State of Madras 3, Guli Chand v. State of Rajasthan 4, Vahula Bhushan v. State of T.N. 5, Jagdish prasad v. State of M.P. 6 and Kartik Malhar v. State of Bihar 7."*

16. In View of the above said evidence, there is no ground to disbelieve the sole testimony of P.W.4 Smt. Parvati Devi and her testimony inspires implicit confidence and it is permissible to record and sustain the conviction of the appellants on the evidence of a solitary witness i.e. of Smt. Parvati Devi. The testimony of Parvati Devi is reliable and believable for the evidence discussed above and there is no legal impediment to convict the appellants Bhup Singh and Diwan Singh on the basis of the above-said evidence. Therefore, the conviction and sentence awarded to the appellants Bhup Singh and Diwan Singh on the statement and evidence of P.W.4 Parvati Devi is justified and as per law.

17. Apart form above, in the application dated 1.11.1980 written by Patwari Digalichaur to Supervisor Kanungo, Circle Pul-hindola i.e. Ex.Ka-3, the Patwari has stated that victim Parvati Devi reached in his headquarter at about 9:00 P.M. She informed him that appellants Bhup Singh, Diwan Singh had abducted her form Jharpatia forest and appellant Diwan Singh detained victim Parvati Devi in his

The Patwari Digalichaur kept the victim Parvati Devi in his headquarters in the guarding of his peon. Since, the case was going on before the Supervisor Kanungo, hence the Patwari Digalichar submitted the application to Supervisor Kanungo, Circle Pul-hindola. The victim Smt. Parvati Devi in her statement before the Patwari Digalichaur has only taken the names of appellants Bhup Singh and Diwan Singh. She has not taken the names of other accused persons namely Jodh Singh and Dungar Singh in her statement that they accompanied the appellants Bhup Singh and Diwan Singh to the Goshala of Diwan Singh and they had any knowledge about the transaction between appellant Diwan Singh and Nepali *Dautiyal*. Hence, they could not be held guilty of the offence punishable u/s 366 IPC and as such accused Jodh Singh and Dungar Singh have rightly been acquitted by the trial court and the appellants Bhup Singh and Diwan Singh were rightly convicted by the trial court for an offence punishable u/s 366 of IPC.

18. From the evidence discussed above, it is proved by the prosecution beyond reasonable doubt that on 22.10.1980 at about 6:00 P.M. in forest Jharpatia, when the victim Smt. Parvati Devi was coming back to her house from Lohaghat, then she was abducted by the present appellants and was detained in the Goshala of appellant Diwan Singh and the appellants had tried to sell the victim Parvati Devi for Rs. 2.000/- to a Nepali Dautiyal against her wish forcibly with the intention to sell her to Illicit intercourse with other person for monetary benefit. The appellant Bhup Singh had also knowledge of sale of thaw victim Parvati Devi to one *Dautiyal*

sentencing them for five years R.I. and fine of Rs. 500/- each and in default of payment of fine, further R.I. for six months.

19. For the reasons recorded above, the appeal is devoid of merits and is hereby dismissed. The judgment and order dated 19.2.1986 passed by Sessions Judge, Pithoragarh is hereby confirmed.

20. Let the record of the case be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

Rajeev Dang